

REMARKS

Claims 1-26 are currently pending in this application. Claims 3, 9, 12, and 23-25 were previously cancelled. Claims 13 and 26 are currently amended and claims 1-2, 4-8, 10-11, 13-22, and 26 are currently pending.

It is believed that in view of the above amendments and below remarks the pending claims are in condition for allowance. If the Examiner believes that any further issues need to be resolved, the Examiner is invited to contact the undersigned at anytime.

Rejection of the Claims Under 35 U.S.C. § 103

Claims 1, 2, 4-8, 10, 11, 13-22, and 26 were rejected under 35 U.S.C. § 103(a) as obvious over Stultz (U.S. Publication No. 2002/0156462) in view of Ellinwood (U.S. Patent No. 4,003,379). Applicant respectfully traverses this rejection.

The Office Action states that “Stultz does not teach using the electrical activity and motion of the patient’s gastrointestinal tract.” Office Action, March 28, 2007, at 2 (emphasis added). The Office Action supplies the missing disclosure by referencing Ellinwood, which it says teaches “sensing the electrical activity of the patient’s gastrointestinal tract as a potentially useful measurement to determine the delivery of medication to the patient.” However, upon examination of Ellinwood, the combination of Stultz and Ellinwood does not present a *prima facie* case of obviousness of the claims as amended.

Ellinwood utilizes sensors that “sense body changes” and includes an example sensor that senses “gastrointestinal motility.” In contrast, independent claims 1, 13, and 26 include limitations to “measuring an electrical activity of the patient’s gastrointestinal tract” (claim 1), “a sensor to sense an electrical activity of a gastrointestinal tract of a patient” (claim 13), and “estimating the quantity of food consumed by the patient as a function of the electrical activity of the gastrointestinal tract” (claim 26). The present invention senses electrical activity through electrodes that are “deployed on or proximate to esophagus 12, stomach 114, and intestine 16” in order “to determine the quantity of food consumed by patient 10.” *See* pars. [0018]-[0019] of the published application. The system may then apply therapy to the patient based upon the quantity of food consumed. Moreover, as stated in the accompanying affidavit of Kenneth T. Heruth, the

named inventor of the present application, gastrointestinal motility and electrical activity do not have a proven correlation.

The combination of Ellinwood and Stultz therefore does not teach, suggest, or disclose all of the elements of the amended claims. The Office Action's statement that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to use the activity of the gastrointestinal tract as the sensed parameter in order to respond to the patient's food intake" does not present a *prima facie* case of obviousness as no evidence has been presented linking "gastrointestinal motility" and the electrical activity of the gastrointestinal tract.

Accordingly, Applicant respectfully submits that claims 1, 13, and 26 are patentable over Stultz in view of Ellinwood.

Dependent claims 2, 4-8, 10, 11, and 14-22 depend directly or indirectly from one of independent claims 1 or 13. Accordingly, claims 2, 4-8, 10, 11, and 14-22 incorporate the features of one of claims 1 and 13. These dependent claims are therefore patentable for at least the same reasons stated above. For brevity, Applicant defers (but reserves the right to present) further remarks concerning the dependent claims which are believed separately patentable.

Therefore, for at least these reasons, Applicant respectfully submits that no *prima facie* case of obviousness presently exists and requests that the § 103 rejection be reconsidered and withdrawn.

CONCLUSION


In view of the foregoing amendments, Applicants respectfully request reconsideration and allowance of the claims as all rejections have been overcome. Early notice of allowability is kindly requested.

The Examiner is respectfully requested to contact the undersigned by telephone at 763.505.0409 or by E-mail at scott.a.marks@medtronic.com with any questions or comments.

Please grant any extension of time, if necessary for entry of this paper, and charge any fee due for such extension or any other fee required in connection with this paper to Deposit Account No. 13-2546.

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Respectfully submitted,



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